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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,927	09/26/2003	Holger Riemer	11150/77	8298
26646	7590	11/16/2005		
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3727	PAPER NUMBER
DATE MAILED: 11/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/671,927	RIEMER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Justin M. Larson	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 5-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
  - (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
  - (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
  - (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
  - (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
  - (f) BACKGROUND OF THE INVENTION.
    - (1) Field of the Invention.
    - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
  - (g) BRIEF SUMMARY OF THE INVENTION.
  - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
  - (i) DETAILED DESCRIPTION OF THE INVENTION.
  - (j) CLAIM OR CLAIMS (commencing on a separate sheet).
  - (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
  - (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).
2. The disclosure is objected to because of the following informalities:
- Sections/headings are underlined and/or in bold. Please note, "Each of the lettered

items should appear in upper case, without underlining or bold type, as a section heading." Appropriate correction is required.

***Claim Objections***

3. Claim 3 is objected to because of the following informalities: It appears as though a word such as "on" or "in" was somehow omitted between the words "arranged" and "an" in line 2. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 2 and 3 read "detecting at least one position of a spare-wheel carrier or a motor vehicle." To the best of understanding, Examiner reasoned from the specification that the sensor detects only at least one position of the spare-wheel carrier. It is therefore unclear as to or not whether applicant is attempting to claim that the sensor detects at least one position of the motor vehicle in addition to detecting at least one position of the spare-wheel carrier. Perhaps the "or" was intended to be "on." Paragraph 12 below relies on Examiner's assumption that applicant intends for the sensor to only detect at least one position of the spare-tire carrier and not at least position of the vehicle.

**35 USC § 112, 6<sup>th</sup> Paragraph**

6. Claim 18 is written in “means plus function” form and since it meets the analysis set forth in MPEP 2181, the Examiner assumes that applicant wishes to invoke 35 USC § 112, paragraph 6.

**Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4, 17, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yokoyama et al. (5,713,501) in view of Boettcher (5,522,530) and LeDuc et al. (6,701,913), and further in view of Farmer (6,712,171). Yokoyama et al. discloses a lockable spare-wheel carrier for a motor vehicle, the spare-wheel carrier pivotable at a body of the motor vehicle and arranged in a region of a tailgate (2) of the motor vehicle, but fails to disclose at least one sensor configured to detect at least one position of the spare-wheel carrier and to transmit the at least one position to a control unit, the control unit configured to enable and block functions of the motor vehicle in accordance with the position of the spare-wheel carrier, and a display unit configured to represent a position of the spare-wheel carrier.

Boettcher and LeDuc et al., however, both teach that it is known in the art to implement a sensor system that indicates to a vehicle operator the status or position of a rack/holder that is attached to an exterior surface of the vehicle. Boettcher specifically

Art Unit: 3727

teaches a sensor (116) that is triggered when carrying rack (10) is opened, at which point the sensor activates a display unit (130) on the interior of the vehicle cab, alerting the vehicle operator that the carrying rack is still open. Similarly, LeDuc et al. teaches that a carrying rack (100) may include a sensing device that detects when the carrying rack is not in a closed position and activates a display unit on the interior of the vehicle to alert the vehicle operator of the carrying rack's position (col. 10 lines 33-43).

In addition, Farmer teaches a safety system in which a sensor detects whether or not a vehicle's fuel door is open or closed, and when the fuel door is open, the sensor sends a signal to a computer that then shuts down the car engine. This system protects the user from fueling their car while the car is running, a seriously dangerous habit, and also prevents the user from driving the car after forgetting to close the fuel door.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spare-tire carrier of Yokoyama et al. by including a safety system with a sensor that activated a display unit within the vehicle to inform the vehicle operator of spare-tire carrier's position, as taught by Boettcher and LeDuc et al., and also wiring the safety system so that in the event the spare-tire carrier was not closed, the vehicle would be turned off or otherwise inoperable, as taught by Farmer. Such a modification would ensure that the vehicle operator did not drive the vehicle while the spare-tire carrier was in an open position, allowing it to swing open at any moment and cause damage to other vehicles or serious harm to any people who might come in close proximity to the vehicle.

9. Regarding claim 3, Official Notice is taken to the fact that it is well known to include such display units or indicators along the dashboard, effectively an instrument cluster, so that the display unit or indicator is visually accessible to the vehicle operator. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the display unit on the dashboard of the vehicle so that the user could easily observe the position of the spare-tire carrier.

10. Regarding claim 17, although the claim attempts to claim the combination of the spare-tire carrier and the tailgate of a motor vehicle, the claimed tailgate is not actually mounted to the tailgate of the motor vehicle and is only shown attached in close proximity to the tailgate (Figure 1). Because Yokoyama et al. also shows a spare-tire carrier attached in close proximity to a tailgate, Examiner considers Yokoyama et al. to clearly disclose the combination, effectively satisfying this limitation in the claim.

11. Regarding claim 18, Boettcher, LeDuc et al., and Farmer all teach that such a safety system would include a means for detecting at least one position of the spare wheel carrier. Farmer, in particular, teaches a means for enabling and blocking functions of the motor vehicle in accordance with the position of the spare-wheel carrier and also a means for transmitting the position of the spare-wheel carrier from the detecting means to the enabling and blocking means. Therefore, the art as applied in paragraph 8 above effectively satisfies the limitations of the claim.

12. Regarding claim 19, the safety system of the art as applied in paragraph 8 above, in its operation, consists of the method steps comprising detecting at least one position of a spare-wheel carrier on a motor vehicle, the spare-wheel carrier pivotable at

a body of the motor vehicle and arranged in a region of a tailgate of the motor vehicle and enabling and blocking functions of the motor vehicle in accordance with the position of the spare-wheeled carrier.

***Allowable Subject Matter***

13. Claims 5-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

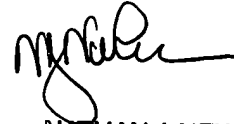
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should



Art Unit: 3727

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JML



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**SUPERVISORY PATENT EXAMINER**